

Remarks

- A. Art of record
 - 1. Pending rejections are based on the following references:
 - a. Lipp – US Pat. 3,863,479.
 - b. Bachhofer – German Pat. 19939180 and Derwent English abstract.
 - c. Kelly – US Pat. 3,838,496.
 - d. McFatter – US Pat. 4,121,747.
 - 2. Previous rejections based on Johnson, US Pat. 6,000,261, have been withdrawn.
- B. Brief history of the case
 - 1. This application was filed on Oct16.2006 as a national phase of a PCT application claiming priority from a US provisional application filed Apr12.2004. The date of completion of all 35 USC § 371 requirements was Jul12.2007.
 - 2. A first office action ("OA1") rejecting Claims 1-26 was entered on or about Feb12.2009, to which a response was filed on Aug12.2009.
 - 3. A response to OA1 was filed on or about Aug12.2009.
 - 4. The present, final office action ("OA2") rejecting Claims 1-26 was entered on or about Dec01.2009.
- C. Grounds for traversing or overcoming the current rejections
 - 1. § 112 rejections of Claims 1 and 14
 - a. OA2 rejects independent claims, Claims 1 and 14, under § 112 on the grounds that the amended claims include a definition of "chair-bend", which is not found in the specification. These rejections have been overcome by deleting the definition objected to and returning the claims to their previous form.
 - 2. § 103 rejections of Claims 1 and 14
 - a. OA2 rejects Claims 1-26 under § 103 in view of various combinations of the references listed above. Independent Claims 1 and 14 are rejected in view of a combination of Lipp and Bachhofer.

- b. Both Claim 1 and 14 claim the limitation of the tank being supported on rollers that engage a roller track that has been formed by the inter-folding of two edges of a metal strip. According to OA2, the limitation of the tank supported by rollers engaging the roller track is disclosed by Lipp at FIG 20, element 7, and by the language of Claim 1, column 6, lines 46-51, which language is quoted as "...supporting rollers . . . supporting the tube at a fold therein. . ."
- c. The applicant respectfully traverses the rejections of Claims 1 and 14 because those rejections are based on an inaccurate factual interpretation of Lipp, as follows.
 - i. Lipp does not disclose any tank, tank wall, or tube suspended by a track formed by interfolded upper and lower edges of a metal strip. Lipp does not disclose any tank, tank wall, or tube supported by *any* track. In fact, Lipp does not even disclose a track or any structure for supporting a tank other than a fold in an upper edge of a strip of metal.
 - ii. Applicant respectfully submits that, contrary to OA2, Lipp does not disclose a track at FIG 18. While Lipp does disclose (FIG 18) the inter-folding of two edges of a metal strip, there is no disclosure in Lipp that this folding forms a track or functions as a track.
 - iii. OA2 asserts that the limitation of Claims 1 and 14 of rollers supporting the tank by engaging with the track is disclosed by FIG 20 of Lipp. This assertion is not correct. FIG 20 of Lipp shows a plurality of rollers 7, but it does not show any tank being suspended by those rollers engaging a track. FIG 20 does not show any tank at all.
 - iv. OA2 also cites Claim 1 of Lipp (column 6, lines 46-51) as a disclosure of a tank suspended on rollers engaging a track. That disclosure is of the rollers supporting "...the tube at a fold . . .", as pointed out by OA2. Applicant respectfully that upon examining

Lipp it is clear that "fold" is entirely different both structurally and functionally from the track of Claims 1 and 14.

v. FIG 6 is the relevant figure of Lipp, not FIG 20. FIG 6 clearly shows, and is described in the specification as showing, the roller 7 supporting the tube not by a track formed by the association of the two edges of the metal strip, but by the single fold in the upper edge only. Lipp clearly discloses and claims supporting the tank by the upper edge only and supporting the tank *prior* to the step in which the inter-bending of the upper and lower edges takes place. Lipp therefore constitutes a clear and unmistakable teaching away from the limitation of the applicant's Claims 1 and 14 wherein the track must be formed by inter-folding the upper and lower bends prior to engaging the rollers.

vi. This interpretation is supported at column 6, lines 4-8 of the specification of Lipp: "Coming from the reel 83, the strip is fed to the profiling station 15 and then, as shown in FIG 6, is **borne by its top bent edge by the supporting rollers 7**, the top rim thereof bearing in contact always in the region of the bend situated at the vertical wall of the tube." [Bold added.]

vii. Conclusion: While Lipp discloses rollers and supporting of the tank wall by those rollers, it does not disclose Claim 1 and 14 because it does not disclose any rollers engaging a track formed by bending and welding the upper and lower edges of the metal strip.

d. The applicant respectfully traverses the § 103 rejection of Claim 14 because Lipp does not disclose the welding positioner of Claim 14. The applicant supports this position as follows:

i. OA2 could not and did not reject Claims 1 or 14 under Lipp alone because, as OA2 admits, Lipp does not disclose a welding step or a welder. Consequently, the examiner relied upon Bachhofer for the welding step. In attempting to meet the welding positioner of

- Claim 14, OA2 asserts that Lipp discloses such a positioner.
- ii. Anyone of skill in the art would recognize that because Lipp does not disclose welding, a welder, or any positioning of any elements in contemplation of welding, then Lipp also does not disclose a welding positioner.
 - iii. Examiner asserts that the folding station 53 of Lipp is a disclosure of a welding positioner. Examiner provides no disclosure from Lipp supporting the examiner's assertion. Lipp makes absolutely no disclosure that the folding station 53 functions or is capable of functioning as a welding positioner. Lipp has nothing to do with welding as admitted by OA2.
 - iv. Consequently, the assertion that the folding station 53 of Lipp does or can function as a welding positioner is based on the examiner's own imagination or personal knowledge that is not supported by any evidence of record.
 - v. Should the examiner persist in applying Lipp against the welding positioner of Claim 14, or should the examiner apply Lipp against the new claims, then the examiner is called on pursuant to 37 C.F.R. § 1.104(d)(2) and MPEP 2144.03 to provide documentary evidence or an affidavit of his personal knowledge that the folding station 53 of Lipp functions as a welding positioner.
- e. Conclusion: OA 2 fails to make a *prima facie* case for the § 103 rejections of Claim 1 and Claim 14 because 1) OA2 fails to set forth any art that discloses a roller track formed by bends in the edges of a metal strip folded together and welded, wherein the roller track supports the tank, and 2) OA2 fails to set forth any evidence that the folding station 53 of Lipp does or is capable of functioning as the welder positioner of Claim 14. Consequently, the applicant has elected to retain Claims 1 and 14 in the continued examination for continuity of the record and given the prospect of appeal. Although, in the interests of facilitating this case, the applicant

has elected to cancel the dependent claims of Claim 1 and Claim 14, which is to say Claims 2-13 and 15-26, the applicant does not concur with the rejections of those canceled claims and does not waive any rights to the subject matter of the canceled claims, including the right to file one or more continuation applications capturing the canceled subject matter should a *Quayle* action preclude further amendments in the present case.

D. Nature and effect of the present amendments

1. By adding new Claims 27-50 Applicant further avoids the art of record by claiming the roller track explicitly as comprising two opposing sides. The track having opposing sides was clearly disclosed in original figures 6a, 6b, 7, 9a, 9b, 11a, and 11b. Supporting language commensurate with this disclosure has been added to the specification by amendment of paragraphs [0058] and [0065] (see above). "In establishing a disclosure, applicant may rely not only on the specification and drawing as filed but also on the original claims if their content justifies it." MPEP 608.04.
2. With respect to the original disclosure of the opposing roller track sides, the perspective views of FIGS 6b, 9b and 11b are particularly revealing because they show the sides of the track forming a channel. And with respect to the rollers "engaging" the track to support the tank wall as it is being constructed, FIGS 11a and 11b show the roller fitting within the sides of the roller track.
3. Applicant submits that the structural limitation of Claims 27 and 40 of the roller track having opposing sides avoids the prior art. A careful review of Lipp, the reference designated as the closest, indicates that Lipp could not function with the roller track of Claims 27 and 40. For example, FIG 6 of Lipp, which figure was has been cited by OA2, shows the complex roller device that Lipp is required to use in order to retain the upper fold on the roller. While that device allows the roller 7 to engage the upper bend of the metal., as noted above, Lipp does not show a roller track. In fact, the roller device of Lipp would not accommodate a track – it only accommodates the flat upper fold, as shown in FIG 6. It certainly

would not accommodate a track having opposing sides as disclosed by the applicant and as claimed in Claims 27-40. Such a track would become jammed in the Lipp roller device.

4. Applicant would like to direct the examiner's attention to FIGs 3a and 3b of Bachhofer, which have been cited in OA2 at page 13. Bachhofer has been cited because Bachhofer discloses welding the edges of the metal strip, which Lipp does not disclose. FIG 3a of Bachhofer has a superficial resemblance to Applicant's FIG 6a and so Bachhofer might appear to disclose the applicant's roller track having two opposing sides. It does not. FIG 3a of Bachhofer is not a disclosure of a track of any kind, but, rather, it is an intermediate step in folding the edges to their final form for welding, shown in FIG 3b and as indicated in OA2 at page 13. In addition, Bachhofer does not disclose any rollers or roller tracks, so FIGs 3a and 3b are clearly not disclosed as being roller tracks by which a tank can be suspended on rollers. They are merely sequential steps in which edges bent and welded to make a seam with a planar protrusion. Bachhofer has not been construed by the examiner as disclosing a roller track, but even if it were to be so construed, by making the second fold shown in FIG 3b, Bachhofer effectively teaches against a roller track comprising two opposing sides.
5. Examiner's attention is drawn to the fact that new Claims 27-50 are directed to a tank wall and a method for making same, whereas the original claims were directed to a tank. Applicant feels that this slight shift in claimed subject matter enhances the clarity of the claims and will facilitate examination. A new search is not required because of this slight modification of the claims. The specification uses "tank" and "tank wall" interchangeably, and it very generously supports the claims to tank wall. Instances of such support are given at:
 - a. paragraph [0013]
 - b. paragraph [0038]
 - c. paragraph [0046]
 - d. paragraph [0047]
 - e. paragraph [0065]

f. paragraph [0068]

g. Abstract

E. Summary

1. The undersigned gratefully acknowledges the examiner's very detailed and comprehensive office action, which has clearly set forth the Office's grounds for rejections, has defined the art, and has pinpointed certain deficiencies of the application, which deficiencies the applicant has endeavored to overcome.
2. Applicant respectfully stands on the original independent claims, Claim 1 and 14, and traverses their § 103 rejection, and hence the rejection of all of claims 1-26. Applicant submits that OA2 does not set forth any disclosure in any art of a roller track formed by the cooperation of bends made in the upper and lower edges of a metal strip and welded together, whereby the tank is supported on rollers that engage the roller track. The nearest disclosure of record appears to be Lipp, which discloses the tank supported by rollers engaging only a bend in the upper edge of a metal strip, wherein the bend used for support does not cooperate with or engage the lower bend.
3. In addition, the applicant traverses the § 103 rejection of Claim 14 on the grounds that Lipp does not disclose any device that would fairly be considered a welding positioner. Lipp does not even disclose welding, as admitted by OA2.
4. Applicant has added new Claims 27-50 that also claim over the art of record by specifying that the roller track has two opposing sides. This limitation, while not included in the text of the original specification, is not new subject matter since it was explicitly disclosed in numerous original figures, which constitute part of the original disclosure.

Wherefore, your applicant respectfully submits that the present claims are in allowable form and claim over the prior art, and your applicant requests reconsideration and withdrawal of the rejections of Claims 1 and 14 and the allowance of new claims, Claims 27-50.

Respectfully submitted,
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